

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAY 28 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Amendment of the Commission's Rules  
Regarding a Plan for Sharing  
the Costs of Microwave Relocation

)  
)  
) WT Docket No. 95-157  
) RM-8643  
)

To: The Commission

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COMMENTS OF  
UTC  
ON FURTHER NOTICE OF PROPOSED RULEMAKING

Pursuant to Section 1.415 of the Federal Communications Commission's (Commission) Rules, UTC, The Telecommunications Association (UTC), hereby submits its comments in response to the *Further Notice of Proposed Rule Making*, FCC 96-196, released April 20, 1996 (*FNPRM*), to modify the established 2 GHz microwave relocation rules and to implement a cost-sharing plan for microwave relocation costs. UTC opposes the modification of the existing relocation framework for C, D, E or F block Personal Communications Services (PCS) licensees, but supports the Commission's proposal to permit microwave incumbents to participate in the cost-sharing plan.

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines. UTC has been an active participant in this proceeding and the predecessor docket which established the 2 GHz transition rules, ET Docket No. 92-9.

The issues raised in the *FNPRM* stem from the Commission's recent *First Report and Order* establishing a cost-sharing plan under which the costs of microwave relocations are shared by the parties that benefit from these relocations. The cost-sharing plan is intended to facilitate the

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deployment of PCS and to encourage the relocation of whole microwave systems at one time. Under the cost-sharing plan, parties relocating microwave links will be eligible to seek reimbursement from other parties based on a cost-sharing formula. A cost-sharing administrator will assist the parties in determining cost-sharing obligations by collecting and maintaining data regarding the relocated links and the deployment of the PCS systems. The *First Report and Order* also clarified some of the relocation requirements of PCS licensees but maintained the basic relocation framework specified in ET Docket No. 92-9.

In the *FNPRM*, the Commission seeks comments on two issues regarding the cost sharing rules and the relocation framework: (1) should the Commission modify the transition framework for C, D, E, or F block PCS licenses; and (2) should microwave incumbents be permitted to participate in the cost-sharing plan?

**I. The Commission Should Not Change the Basic Relocation Framework for Incumbents Affected by the C, D, E, or F Block Licenses**

The Commission proposes to modify the relocation rules for the D, E and F Block licenses to shorten the voluntary negotiation period from two years to one year and extend the mandatory relocation period from one year to two years.<sup>1</sup> The Commission surmises that this change could potentially accelerate the development of the D, E and F Block systems and create additional incentives for incumbents to enter into early agreements.

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<sup>1</sup> Public safety licensees would have a two year voluntary negotiation period and a three year mandatory negotiation period.

UTC urges the Commission not to adopt these unnecessary changes to the relocation rules. As UTC has noted previously, the existing "sound and equitable"<sup>2</sup> relocation framework is the result of an extensive public debate. The result of this debate, a carefully crafted relocation solution, is now under fire as "unworkable" from PCS licensees only one year into the process. The relocation framework, including the recent clarifications, should be given the opportunity to work and should not be modified at this time.

The Commission must not be misled by the PCS's industry's mischaracterizations regarding the current rules. The industry's one-sided and often inaccurate descriptions of alleged abuses by incumbents must be carefully scrutinized and cannot be taken at face value. When these allegations are analyzed, the inaccuracies quickly become obvious. The allegations of extortion filed by the Cellular Telecommunications Association (CTIA) against eleven microwave incumbents are a good example. These allegations imply that the incumbents are obstructing the deployment of PCS and abusing the relocation rules. However, as UTC and the victims of these scurrilous allegations point out in their filings with the Commission, the reality is that the current rules are resulting in negotiations and completed relocation agreements.<sup>3</sup>

In fact, UTC performed a survey of microwave incumbents which demonstrated that agreements had been reached by almost 1/3 of the respondents for the relocation of some portion of their microwave paths. Moreover, almost 2/3 of respondents were actively involved in negotiations. These results demonstrate the effectiveness of the current rules and the lack of need for further

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<sup>2</sup> Even the Commission noted that the existing framework was "sound and equitable" in the *Notice of Proposed Rulemaking (NPRM)* ¶3.

<sup>3</sup> Attached to these comments are CTIA's "extortion" letter and the responses from UTC and the victims of the attack, as well as the letters filed by Sprint Spectrum retracting the allegations with regard to Western Resources and Detroit Edison.

changes. Significantly, over half of the respondents indicated that they had at least some paths in the A and B blocks for which they had received no relocation offers. From this, it appears that either the PCS licensees are not moving aggressively to build-out their systems, or they are engaged in other activities that do not compel them to seek microwave relocations during the first year after license grant. This being the case, there is no need to reduce the voluntary period to one year when most PCS systems are not ready for operation within the first year after license grant.

The alleged "problems" encountered by the PCS licensees do not stem from the timing of the voluntary or mandatory negotiation period, but from the basic reliance on marketplace mechanisms to resolve this matter. The current rules acknowledge the need to balance both PCS and incumbent interests, and to tailor the relocation terms to the unique operational characteristics of individual incumbents. As Commissioner Quello acknowledge in his "Separate Statement" to the *First Report and Order and FNPRM*, the inherent flexibility of the relocation rules can lead to some difficulties but these difficulties are always possible when the Commission "correctly decides to rely on negotiations between the parties rather than the heavy-handed government intrusion into what should be private contractual matters." The Commission must permit the existing market mechanisms to work to ensure that the needs of both incumbents and PCS licensees are properly balanced.

In light of the lack of any demonstrated need for further changes to the relocation rules, fairness requires the Commission not to change the expectations of the incumbents, which have formulated plans for microwave relocations based on the current rules. These rules influence the incumbent's budgetary decisions regarding costs for engineering studies, staffing and other relocation costs which must be paid, at least initially, by the incumbent. The Commission must ensure that

incumbents have sufficient time to plan the relocation and to devote adequate resources to this effort.

Chairman Hundt recommended caution when considering whether to change the relocation rules, noting in his "Statement" on the *First Report and Order and FNPRM*:

In considering whether to shorten the period for voluntary negotiations for the C, D, E and F blocks, we should be mindful of the fact that the 2 GHz fixed microwave bands support communications of incumbent police, fire and emergency medical licensees, as well as public utilities and others that provide essential services to the public. It is critical that these licensees be able to rely on established rules and that the relocation process not cause disruption or harm to their communications services.

UTC particularly objects to any proposal to modify the relocation rules for incumbents affected by the C block licensees. As the Commission itself points out, the C block PCS licenses bid for their licenses based on the current rules.<sup>4</sup> These licensees have taken the costs of these rules into account in their bids<sup>5</sup> and are beginning to negotiate with incumbents in some markets. Furthermore, the incumbents are relying on the current rules in their negotiations with the C block licensees. The Commission must not alter the expectations of the parties at this time.<sup>6</sup>

## **II. Incumbents Should be Permitted to Participate in the Cost-Sharing Plan**

The second issue on which the Commission seeks comment in the *FNPRM* is whether incumbents should be permitted to participate in the cost-sharing plan. As originally proposed, only PCS licensees would be eligible for participation in the cost-sharing plan. However, as UTC and

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<sup>4</sup> *FNPRM* ¶97.

<sup>5</sup> The relocation obligations set forth in the current rules did not appear to affect bidding for C block licenses. The C block auction raised over \$10.2 billion, substantially more than the A and B block auctions.

<sup>6</sup> Chairman Hundt's concerns, as expressed in his "Statement" to the *FNPRM and First Report and Order*, regarding changes to the relocation rules for the C block licensees are well founded. Changes to these rules may be particularly disruptive to incumbents which are currently in negotiations with C block high bidders.

other commenters pointed out, incumbent participation would promote the Commission's stated goals of facilitating the deployment of PCS and encouraging the relocation of microwave systems.

UTC fully supports the expansion of the cost-sharing plan to permit participation by incumbents. UTC noted in its reply comments to the *NPRM* that:

By permitting incumbents to participate in cost-sharing, the FCC will not only encourage the relocation of incumbent systems in the most efficient and least disruptive manner, but will also speed up the deployment of PCS. PCS licensees subject to cost-sharing with incumbents will not face lengthy negotiations over comparable facilities or the installation or testing thereof. Relocation costs will be known and once an agreement is reached, the PCS licensee can immediately begin operations.<sup>7</sup>

Incumbent participation in the cost-sharing plan will be important in a number of scenarios. For incumbents in rural areas, where PCS deployment is uncertain, incumbent participation will permit incumbents to plan and construct new systems earlier in the process and to gain access to frequencies that may not be available when PCS licensees do desire to deploy in their areas. For incumbents which are unable to negotiate whole-system changeouts from initial PCS licensees, expansion of the cost-sharing rules would permit them to relocate entire systems at once, thereby minimizing engineering and construction costs and the risk to the reliability of their systems that is attendant in piecemeal replacements. Of course in both these scenarios, the PCS licensees will benefit by gaining access to the incumbent's spectrum in an expedited manner, without having to negotiate over the details of the relocation or having to wait for an incumbent to construct replacement facilities.

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<sup>7</sup> UTC Reply Comments at p. 4.

The implementation of incumbent participation in cost-sharing should pose no practical problems. The Commission has done a commendable job in delineating the rights and responsibilities of participants. These rights and responsibilities are easily transferable to participating incumbents. In particular, participating incumbents would be required to notify the cost-sharing administrator regarding links for which reimbursement is sought. The incumbent would be required to maintain documents supporting the relocation costs and would be subject to the caps imposed on cost-sharing reimbursement.<sup>8</sup> Reimbursement should be permitted on a *pro rata* basis from each PCS licensee which benefits from the relocation, as determined by the Proximity Threshold test. Pursuant to the cost-sharing plan, incumbents would be entitled to reimbursement for up to 100% of the relocation cost because it would be considered a relocation outside the relocator's frequency block. Similarly, under the cost-sharing rules, the cost-sharing obligation would not be depreciated.<sup>9</sup>

One issue which must be addressed with regard to incumbent participation in the cost-sharing plan is how to provide an incentive for an incumbent to minimize relocation costs to ensure that PCS licensees are not required to pay more if an incumbent relocated itself than if the incumbent was relocated by another PCS licensee. Several characteristics of the relocation process mitigate against overcharging by incumbents. First, participating incumbents are not guaranteed to receive reimbursement for the relocation of a link unless and until a subsequent PCS licensee's deployment would have required the relocation. Incumbents are taking a risk in participating in cost-sharing and are unlikely to increase this risk by increasing relocation costs. Even if the incumbent receives

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<sup>8</sup> As specified in the *First Report and Order*, these caps are set at \$250,000 per link, with an additional \$150,000 permitted if tower modifications are needed. *First Report and Order* ¶74, Appendix A ¶27.

<sup>9</sup> *First Report and Order*, Appendix A ¶17

compensation for some links, it might not be reimbursed for all links and will end up bearing any remaining costs.<sup>10</sup> Second, many incumbents, including utilities and pipelines, are heavily regulated entities which are subject to close scrutiny of expenditures. They are therefore subject to other business and regulatory constraints which will limit their relocation expenditures. Third, pursuant to the cost-sharing rules, incumbents would be required to retain records accounting for the relocation costs; all costs are therefore verifiable by the PCS licensees. The cost-sharing rules also specify reimbursable and non-reimbursable costs. By examining the supporting documentation, PCS licensees can ensure that they are reimbursing only for appropriate costs. Fourth, the cost-sharing rules impose caps on reimbursement expenditures which will serve to limit the PCS licensees' reimbursement obligations and to clearly define the incumbents upper limit for relocation costs.

As an additional safeguard, UTC recommends that, for incumbents which have already had one or more links relocated by a PCS licensee, a rebuttable presumption should be established that an amount expended for self-relocating a link is reasonable if it does not exceed the lesser of: (1) the cost-sharing cap; or (2) the average relocation cost for the PCS-relocated links. Under this proposal, relocation terms that are subject to arms-length negotiations can be used as a benchmark for assessing the reasonableness of costs incurred by the incumbent for self-relocation.

The Commission also seeks comment on whether a large number of incumbents would avail themselves of the option of participating in the cost-sharing plan given that the Commission's rules require PCS licensees to pay the entire cost of relocating incumbents to comparable facilities. UTC

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<sup>10</sup> Additionally, because an incumbent would not receive interest on the money tied up in the relocation, the incumbent has an even greater incentive to minimize costs and thereby minimize the lost time value of the money.



believes that numerous incumbents would avail themselves of the opportunity to participate in the cost-sharing plan if permitted. As explained above, many incumbents are faced with situations where some or all of their links may not be relocated by PCS licensees during the initial stage of PCS deployment. Incumbent participation in cost-sharing will permit these incumbents to relocate links themselves in order to reduce costs, minimize disruption to their microwave systems and obtain needed replacement frequencies.

Finally, the Commission seeks comment on whether incumbents should be treated as the initial relocater for the purposes of applying the cost-sharing formula. The cost-sharing formula must be applied equitably to both PCS and incumbent participants. Therefore, incumbents can and should be treated as an initial relocater subject to the rules for the relocation of links entirely outside the relocater's frequency block. These rules specify that such relocations are not subject to depreciation under the cost-sharing formula. As with PCS relocators which relocate links outside their licensed territory or frequency block, incumbent participants do not gain an advantage from the relocation vis-a-vis subsequent PCS licensees, and therefore need not have their reimbursement obligations depreciated to account for this advantage. Furthermore, because the timing of the incumbent's self-relocation has no effect on creation of the reimbursement obligation under the Proximity Threshold test, there is no reason to depreciate the PCS licensee's reimbursement obligation.

### **Conclusion**

UTC opposes the Commission's proposal to modify the relocation framework for the C, D, E or F block licensees to change the lengths of the voluntary and mandatory negotiation periods. This


modification is not necessary to facilitate the deployment of PCS. Contrary to the allegations of the PCS industry, the current framework is effectively promoting negotiations and relocation agreement. UTC supports the Commission's proposal to permit incumbents to participate in the cost-sharing plan. Incumbent participation can be easily accommodated by the current cost-sharing rules and will promote both microwave relocations and PCS deployment.

**WHEREFORE, THE PREMISES CONSIDERED,** UTC requests the Federal Communications Commission to take action in accordance with the views expressed in these comments.


Respectfully submitted,

UTC

By:

  
Jeffrey L. Sheldon  
General Counsel

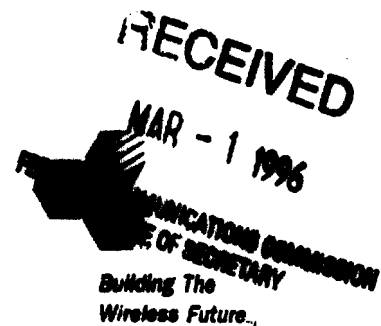
By:

  
Thomas E. Goode  
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Dated: May 28, 1996



March 1, 1996

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
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Thomas E. Wheeler  
President / CEO

Re: **Amendment of the Commission's Rules Regarding a Plan  
for Sharing the Costs of Microwave Relocation**  
(WT Docket No. 95-157, RM 8642)

Dear Mr. Chairman:

We have written to you several times on the subject of microwave relocation and, in particular, the trend which continues to threaten the timely rollout of broadband PCS. As we have detailed in previous letters, certain incumbent microwave operators in the 2 gigahertz (GHz) band are using their status as FCC licensees to make unconscionable demands of the new PCS licensees as a pre-condition to the relocation of their facilities which must occur prior to the offering of PCS.

This further correspondence is a plan for the Commission to act. The continued failure to act in this matter is jeopardizing the fulfillment of the Commission's PCS vision.

As we have also noted, except in the most egregious circumstances, PCS licensees are reluctant to go public with their frustrations over the recalcitrant behavior of microwave incumbents. This reticence is due to their fear of even greater delay in bringing incumbents to the bargaining table or the risk of future retribution in cases where the incumbent is also a governmental body.

Today, it is my unfortunate duty to further report several representative cases in which the microwave incumbents' behavior is so outlandish and irresponsible as to threaten the ability of PCS licensees to begin offering service this year. The enormity of the impact of this situation has compelled one PCS company, a member of CTIA, to risk the potential retribution resulting from public disclosure.

Chairman Hundt  
 March 1, 1996  
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Sprint Spectrum (formerly Sprint Telecommunications Venture or STV) is currently licensed to provide service in twenty-nine MTA markets.<sup>1</sup> Approximately 1,400 microwave links are located within Sprint Spectrum's licensed spectrum bands, making it the MTA licensee with the greatest number of links that may require relocation. By its own estimate, 71 of those links must be relocated to initiate service throughout its markets. Of course, as capacity requirements expand with subscriber growth, additional links will have to be moved, as well.

The attached materials detail the outrageous financial demands of certain microwave incumbents having links in Sprint Spectrum's PCS bands. You will note that the demands of the Union Pacific Railroad exceed even that of the Suffolk County (Long Island) Police Department, the incumbent that Sprint Spectrum was previously willing to identify.<sup>2</sup> For your convenience the attached information is summarized below.<sup>3</sup>

| <u>Microwave Incumbent</u>     | <u># of Links</u> | <u>Est. Fair Cost</u> | <u>Requested Cost</u> | <u>Extortion Delta</u> |
|--------------------------------|-------------------|-----------------------|-----------------------|------------------------|
| Union Oil of California        | 5                 | \$1,250,000           | \$18,350,982          | \$ 17,100,982          |
| Union Pacific Railroad         | 24                | 6,000,000             | 48,250,000            | 40,250,000             |
| Puget Power                    | 12                | 3,000,000             | 7,600,000             | 4,600,000              |
| Williams Wireless              | 7                 | 1,750,000             | 21,380,000            | 19,630,000             |
| Washington State Patrol        | 10                | 2,500,000             | 2,886,817             | 386,817                |
| Western Resources              | 2                 | 500,000               | 820,136               | 320,136                |
| BNSF                           | 1                 | 250,000               | 2,000,000             | 1,750,000              |
| Guadeloupe Valley Elect. Co-op | 2                 | 500,000               | 1,304,416             | 804,416                |
| New Jersey Turnpike Authority  | 4                 | 1,000,000             | 2,500,000             | 1,500,000              |
| Detroit Edison                 | 2                 | 500,000               | 950,400               | 450,400                |
| Suffolk County Police          | 2                 | 500,000               | 22,000,000            | 21,500,000             |
| Total                          | 71                | \$17,750,000          | \$126,022,551         | \$108,272,551          |

Per link excess charge:.....\$1,524,965

<sup>1</sup> Sprint Spectrum is licensed to serve the following MTA markets: New York, NY; San Francisco-Oakland-San Jose, CA; Detroit, MI; Dallas-Fort Worth, TX; Boston, MA-Providence, RI; Minneapolis-St. Paul, MN; Miami-Fort Lauderdale, FL; New Orleans-Baton Rouge, LA; St. Louis, MO; Milwaukee, WI; Pittsburgh, PA; Denver, CO; Seattle, WA (excluding Alaska); Louisville-Lexington-Evansville, KY; Phoenix, AZ; Birmingham, AL; Portland, OR; Indianapolis, IN; Des Moines-Quad Cities, IA; San Antonio, TX; Kansas City, KS; Buffalo-Rochester, NY; Salt Lake City, UT; Oklahoma City, OK; Spokane, WA-Billings, MT; Nashville, TN; Wichita, KS; and Tulsa, OK. Its affiliate, American Personal Communications, trading under the Sprint Spectrum brand, serves the Washington, DC-Baltimore, MD MTA.

<sup>2</sup> See Comments of CTIA in this proceeding, filed December 1, 1995, Exhibit I, at 1.

<sup>3</sup> Unlike the attached detailed information from Sprint Spectrum, CTIA has assumed an "estimated fair cost" of \$250,000 per microwave link, the maximum per link amount contained in the Commission's proposed cost sharing plan. As such, in several instances, the summary information underestimates the per link excess charge demanded by the incumbents.

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The \$108 million difference between the estimated fair relocation cost and the sums demanded by the incumbents for these 71 links is clearly unreasonable and, CTIA believes, clear evidence of bad faith on the part of the incumbents. Of course these numbers provide only a partial picture of the kind of abuse PCS providers must confront.

The magnitude of this problem can be illustrated another way. If the average per link excess charge (\$1,524,965) is extrapolated to the C block PCS band, where approximately 1,874 microwave links are found, the amount demanded above the fair estimated relocation cost would come to more than \$2.8 billion.<sup>4</sup> Extrapolating the overage (\$1,524,965) to the D, E, and F PCS bands, where as many as 2,951 microwave links may require relocation, the amount demanded above the fair estimated relocation cost would come to more than \$4.5 billion.<sup>5</sup>

These incumbents know that they can take advantage of the Commission's current voluntary negotiation rules by refusing to bargain in earnest or by making financial demands having no relation to the actual costs of relocation. Mr. Chairman, enough is enough! We have previously submitted information which has been "sanitized" to prevent retribution. This instance is merely illustrative and, fortunately, Sprint Spectrum has been willing to "go public."

This behavior is not what the Commission envisioned when it adopted the current rules. Sprint Spectrum has invested more than \$2 billion in the auction alone and will spend untold millions more to build out its markets. How much more will be added to the price tag by the incumbents? How much more must PCS providers "invest" to meet the greedy demands of microwave incumbents when these funds might be used to innovative services to the public?

The Commission must act with dispatch to change the microwave relocation rules to eliminate this kind of irresponsible behavior by parties holding a public trust, i.e., their FCC license. The rules must be changed if the American public is to enjoy the benefits of new wireless competition. CTIA urges the Commission to, post-haste, make the following changes in the microwave relocation rules:

1. Shorten the voluntary negotiation period to one year.

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<sup>4</sup>  $\$1,524,965 \times 1,874 = \$2,857,785,000$ .

<sup>5</sup>  $\$1,524,965 \times 2,951 = \$4,500,173,211$ . Because the D,E and F licensees will have only ten megahertz to work with, a higher percentage of the resident microwave links may have to be relocated to initiate service.

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March 1, 1986  
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2. Require "good faith" negotiation during the voluntary period. As an element in the determination of an incumbent's good faith, the incumbent should be required to provide a reasonable justification of its financial and technical demands.
3. To encourage incumbents to negotiate during the voluntary period, recoverable costs during the mandatory negotiation period should be limited to the undepreciated cost of the incumbent licensee's existing system.
4. A determination of an incumbent's failure to negotiate in good faith during the voluntary period should immediately invoke the commencement of the mandatory negotiation period and the incumbent's license should be immediately downgraded to secondary status.

While most microwave incumbents are behaving responsibly, the Commission must eliminate the ability of a few mercenary incumbents to thwart nationwide PCS in its infancy.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Wheeler", written over the typed name.

Thomas E. Wheeler

cc: Commissioner James H. Quello  
Commissioner Andrew C. Barrett  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
Michele Farquhar  
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March 21, 1996

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554

Re: 2 GHz Microwave Relocations  
WT Docket No. 95-157

Dear Mr. Chairman:

UTC, The Telecommunications Association (UTC) wishes to respond to the allegations raised by the Cellular Telecommunications Industry Association (CTIA) in its letter to you of March 1, 1996. CTIA has moved from zealous representation of its constituents to blatant misrepresentation to this agency.

In its letter, CTIA unabashedly accuses eleven incumbent licensees in the 2 GHz microwave band of being "extortionists." Although UTC would not purport to speak on behalf of these licensees individually regarding these allegations, UTC feels compelled to point out some of the inconsistencies as well as fabrications in CTIA's most recent tirade.

Once again, CTIA uses its own definition of "extortion" to make these allegations; *i.e.*, any counter-offer or request made by an incumbent that exceeds the PCS licensee's offer is, by CTIA's definition, "extortion." Incredibly, CTIA has managed to ignore the two terms that define the very process in which PCS licensees and microwave incumbents are engaged: voluntary negotiations. If anything, the materials submitted by CTIA demonstrate that parties are meeting, exchanging relocation estimates, and discussing relocation timeframes.

Review of the "Bad Actor" forms and other material appended to CTIA's letter demonstrate how reckless CTIA's allegations really are:

- Using slight-of-hand calculations, CTIA accuses these eleven companies of demanding an average "per link excess charge" of \$1.5 million. To inflate the costs to this magnitude, CTIA cleverly divides the total system replacement costs provided by each licensee by just the paths in which Sprint Spectrum has expressed interest.<sup>1</sup> The need

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<sup>1</sup> See, *e.g.*, materials relating to Union Oil; Union Pacific Railroad; Guadeloupe Valley Electric Cooperative; and Williams Wireless, Inc. appended to the CTIA letter.

for system-wide microwave relocations was acknowledged by Sprint and many of the other commenters in the "cost-sharing" docket, yet CTIA omits any reference to the cost-sharing proceeding.<sup>2</sup> How can a request for a system-wide relocation be considered "extortion" when the FCC has proposed rules to facilitate such agreements, and when the PCS industry has overwhelmingly supported these proposed rules?

- In some cases, CTIA would have the FCC intervene even before the PCS licensee has responded to the microwave licensee with a counter-offer or other response. For example, in CTIA's "Bad Actor" form for Burlington Northern - Santa Fe Railroad, the following notes from Sprint or its consultant can be found:

"We have not responded to [the BNSF] proposal since STV has begun to work well with BNSF in other MTAs and BNSF will only negotiate a single sub-system at a time. It is expected that this sub-system will be next for negotiation and STV plans to use the good faith precedence set in other sub-systems for the negotiation of our single path for relocation."

Even though neither Sprint nor its consultant responded to the BNSF proposal, and even though Sprint states that it "has begun to work well with BNSF," CTIA twists these facts around to meet its own political agenda by alleging that BNSF is engaged in "extortion."

- The information appended to CTIA's letter also calls into question whether PCS licensees are negotiating in good faith with incumbents, or whether they are simply engaged in a coordinated effort to elicit "evidence" that could be used to revise the relocation rules. For example, in a summary of her first meeting with one incumbent, Sprint's agent reported to Sprint that she would "try and get [the incumbent's] starting position in writing from them so that if we need to go to the FCC, we have some proof."<sup>3</sup> UTC questions whether Sprint instructed its agent to negotiate with the incumbent or to entrap the incumbent.

The unfortunate result of CTIA's rhetoric is a self-fulfilling prophecy: future negotiations are likely to falter or fail because CTIA is creating an environment of distrust in which no incumbent will feel comfortable negotiating. If an incumbent cannot submit a proposal to a PCS licensee without fear of being publicly labeled an "extortionist" no matter how reasonable its opening offer, why would any incumbent even agree to negotiate at this point in the process?

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<sup>2</sup> "Systemic relocations can cost three to five times more than the relocation of individual links, but can be, in the long run, more spectrum efficient, less costly and less disruptive." Comments of SprintTelecommunications Venture, filed November 30, 1995, in WT Docket No. 95-157, at p. 23.

<sup>3</sup> See September 20, 1995, "Negotiations Summary for Suffolk County Police," prepared by Katie Drucker, and appended to the CTIA letter.



To help you better understand the status of negotiations, I am attaching the results of a recent UTC survey on negotiations between incumbents and the A and B block PCS licensees. As you will note, a significant number of microwave paths are under contract for relocation, and an even greater number of paths are currently subject to negotiations. Equally significant, a large percentage of the survey respondents indicate they have paths in the A and B block for which they have not even been contacted about relocation!

UTC would be happy to provide you or your staff with examples of some of the hard-ball negotiating tactics used by PCS licensees and their agents, including some of the outright misrepresentations some of these parties are making to incumbents as to their rights and obligations during the voluntary negotiation period. However, public debate over these negotiations would only serve to heighten the tension created by CTIA between the incumbent community and PCS licensees, and would needlessly involve the Commission in the details of what were intended to be market-based negotiations and relocations.

Mr. Chairman, we urge you to carefully review the materials submitted by CTIA and to draw your own conclusions as to which parties are negotiating in good faith and which are gaming the process through political maneuvering. Instead of proving the existence of an "extortion delta" in PCS negotiations, CTIA's letter proves there is a "distortion delta" between its rhetoric and the truth.

Very truly yours,



Jeffrey L. Sheldon  
General Counsel

Attachment

cc (w/ attachment):

Commissioner James Quello  
Commissioner Susan Ness  
Commissioner Andrew Barrett  
Commissioner Rachelle Chong  
Michele Farquhar, Chief, Wireless Telecommunications Bureau  
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Direct Dial

## **UTC SURVEY OF MICROWAVE INCUMBENTS REVEALS INCUMBENTS ARE NEGOTIATING; DEALS ARE BEING REACHED**

In an effort to determine the status of negotiations between microwave incumbents and PCS licensees, UTC, The Telecommunications Association, conducted a survey of all incumbents licensed in the bands affected by the Block A and B PCS licensees. The survey instrument queried incumbents as to whether they operate paths: (1) subject to completed relocation agreements; (2) for which relocation negotiations are underway; and (3) for which they have not been contacted. The survey also inquired as to the number of paths associated with each of these responses, and whether the incumbent has refused to negotiate or withdrawn from negotiations.

Over 400 surveys were mailed to incumbents during early February 1996 and 103 responses, representing incumbents with nearly 1300 paths, were received. The results of the survey were suprising:

- 32% of respondents have entered into relocation agreements with PCS licensees regarding a portion of their microwave paths;
- in less than one year after the voluntary negotiation period began, 19% of respondent microwave paths are subject to a relocation agreement;
- 64% of the respondents are currently in negotiations;
- 42% of respondent paths are the subject of current negotiations;
- 51% of respondents have not been contacted regarding a portion of their microwave paths;
- of those that have been contacted regarding all of their microwave paths, 32% have completed relocation agreements and 62% are currently in negotiations;
- the respondents that have concluded agreements or are currently negotiating with the PCS licensees operate approximately 786 paths, or 60% of the total respondent microwave paths affected by the Block A and B licenses;
- only one respondent has withdrawn from negotiations due to the intractable position of the PCS licensee in its area.

The survey results offer a stark contrast to the image of negotiations being painted the PCS industry.

- While one PCS association is claiming that the process is not working, the results clearly indicate that it is -- 60% of microwave paths affected by the Block A and B licenses are the subject of either current negotiations or of successfully concluded relocation agreements.
- The PCS association implies that the incumbents are delaying the deployment of PCS, yet the survey results reveal that deployment is not being delayed by refusals to negotiate on the part of incumbents but by the failure of PCS licensees to begin negotiations -- none of the respondents have refused to negotiate with PCS licensees (though one has delayed negotiations to better prepare technical information), yet over half the respondents have not been contacted regarding some or all of their Block A and B paths.
- The PCS association claims that incumbents are taking advantage of the current negotiation period by refusing to negotiate, yet not a single survey respondent indicated that it has refused to negotiate with PCS licensees even during this voluntary negotiation period. The single respondent that did delay negotiations did so simply to provide additional time to analyze its technical requirements.

The survey results offer an objective view of the true status of negotiations. Unlike the inaccurate statements based on exaggerated figures and half-truths that have been spread by one PCS association, the results of the survey demonstrate that the current rules are working and agreements are being reached.

1-12-1995 10:12AM

FROM

P. 2

Chairman

*Received Jim*

*REH*

MAR 15 1 24 PM '96

 **PRODUCTS COMPANY**

March 13, 1996

**RANDOLPH L. HOWARD**  
Vice President  
Supply  
Transportation and Planning

**The Honorable Reed E. Hundt**  
Chairman  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D.C. 20554-001

**Re: Cellular Telecommunications Industry Association  
(CTIA) Allegations of Bad Faith Negotiation by  
Union Oil Company of California**

**Dear Chairman Hundt:**

The purpose of this letter is to provide you and your fellow Commissioners the facts concerning the ongoing negotiations between Union Oil Company of California (UNOCAL), and several PCS licensees, particularly Pacific Bell Mobile Services (PBMS), Cox California PCS, Inc. (Cox) and Sprint Telecommunications Venture (STV). The information supplied you by the Cellular Telecommunications Industry Association (CTIA) in its letter of March 1, 1996 is incomplete, inaccurate, and grossly distorted. \*

Union operates an extensive private microwave system, authorized frequency assignments from the band 1850-1990 Mhz, that extends from our Los Angeles Refinery in Southern California to Mt. Vaca and our San Francisco Refinery in the San Francisco Bay Area. This microwave system provides communications that are absolutely critical to the monitoring and remote operation of seven main pipelines that transport both crude oil and partially refined petroleum products to refineries in Southern California and the San Francisco Bay Area, as well as eight local product pipelines in various California areas. This backbone microwave system must be viewed in its entirety as a single integrated facility because of the critical traffic it carries, and its replacement must be accomplished with a single comprehensive relocation plan. Any attempt to convert a few paths to meet the individual objectives of a single PCS licensee would require UNOCAL to forego its responsibility of protecting the integrity of this telecommunication system and therefore potentially jeopardize the safety of these pipelines, the environment and the public. It is for that reason that we invited PBMS, Cox and STV to explore with us the joint development of a comprehensive agreement for UNOCAL's relinquishment of the authority for the operation of 27 microwave links that comprise the backbone of this system.

\* CTIA did not provide UNOCAL a copy of its outrageous allegations, and we only secured a copy of the letter on March 8, 1996.

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The Honorable Reed E. Hundt  
 March 13, 1996  
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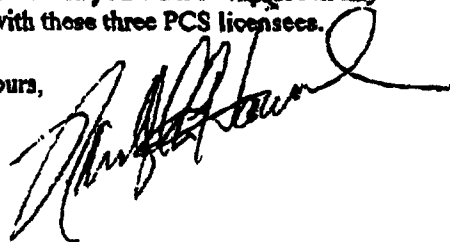
CTIA's letter of March 1, 1996 grossly misrepresents the state of our negotiations, now conducted with PBMS alone, for the relocation of all 27 links, which are progressing in a very positive manner. Interestingly, UNOCAL has had no communication with STV since our second meeting with the licensees' representatives on October 17, 1995. UNOCAL has not canceled any meetings with PCS licensee representatives, as asserted by CTIA, and, in fact, we have continually pressed PBMS personnel to move the negotiations to an early conclusion.

Most importantly, however, the so-called summary appearing on Page 2 of the CTIA letter suggests that our calculated costs of \$18,350,000 was for five links. As any rational reading of our communication of December 15, 1995 makes absolutely clear, the proposal addresses all 27 links in the backbone system. Our offer was made, obviously, in response to what we felt was an inadequate initial proposal by the PCS licensees. Representatives of PBMS and UNOCAL have continued to negotiate and, in fact, we believe that our subsequent communication directed to PBMS significantly closes the gap between our two positions. The CTIA reference to an "extortion delta" is an unconscionable misrepresentation of the facts, as well as the progress of our negotiations which, as stated above have not included representatives from STV.

It is also abundantly clear that CTIA, acting in a very irresponsible manner on behalf of at least one of its members, is seeking to employ the Commission's process in a grossly unfair manner to further the negotiation aims of a few. The FCC's negotiation process is accomplishing exactly what it was intended to achieve -- a fair and equitable transition of incumbent use to emerging technologies in the frequency band 1850-1990 Mhz. We urge you not to make any fundamental changes in this very successful process.

UNOCAL initiated joint negotiations with all three affected PCS licensees, has always negotiated in good faith, and will continue to do so in the hope that we can serve both the purposes of providing a transition for our own critical telecommunications system as well as facilitate the introduction of new technology for the citizens of California which are also our customers. We are, quite frankly, appalled by the CTIA behavior; and, I want to assure you of my availability to travel to Washington, D.C. to meet with you should you wish to explore at any level those factors which form the basis for our negotiations with these three PCS licensees.

Very truly yours,



cc: Commissioner James H. Quello  
 Commissioner Andrew C. Barrett  
 Commissioner Rachelle B. Chong  
 Commissioner Susan Ness  
 Michele Farquhar  
 Rosalind Allen



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**Robert J. Horn**  
Assistant Vice President and Manager  
Federal Affairs

March 18, 1996

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, NW  
Room 814  
Washington, DC 20554

Re: Amendment of the Commission's Rules Regarding a Plan for  
Sharing the Costs of Microwave Relocation  
(WT Docket No. 95-157, RM 8642)

Dear Chairman Hundt:

On March 8, 1996, Detroit Edison received a copy of a March 1, 1996, letter sent to you by Thomas Wheeler, President of the Cellular Telecommunications Industry Association (CTIA). That letter contains allegations that Detroit Edison engaged in egregious, outlandish and irresponsible behavior during negotiations with Sprint Spectrum for cost sharing of microwave relocations. Although Detroit Edison will not burden the federal Communications Commission ("Commission") with a detailed response, the allegations in that letter are simply not true. There is, however, a need to briefly clarify the record regarding Detroit Edison's negotiating approach.

The compensation terms Detroit Edison would seek in any negotiations are its reasonable estimate of the additional expenses that will be incurred as a result of relocating microwave links. All costs are commercially reasonable and completely justifiable. As was noted in the last footnote on the "bad actor" form submitted by CTIA, Detroit Edison is willing to provide full documentation in support of its cost estimates. Further, Detroit Edison is willing to explain its costs in depth to the Commission should such action be warranted.

Detroit Edison has and will continue its policy of negotiating in good faith with all parties. We regret, however, that we are precluded at this time, from providing more specific comments with regard to any particular party with whom Detroit Edison may or may not be negotiating.

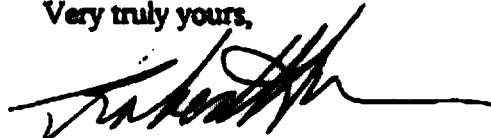
Hon. Reed E. Hundt

March 18, 1996

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The March 1, 1996, letter is an obvious attempt by CTIA, and perhaps others, to gain a negotiating advantage or to foster unneeded change to the Commission's microwave relocation rules. In support of their efforts, CTIA has inappropriately attached documents and information purporting to be related to certain negotiations. We regret that it has become necessary to file this response, but felt that such inappropriate and untrue allegations could not be allowed to stand unanswered on the record. Please let me know if additional information is needed.

Very truly yours,



Robert J. Horn  
Assistant Vice President and  
Manager, Federal Affairs

RJH/jsd

cc: Commissioner Andrew C. Barrett  
Commissioner Rachelle B. Chong  
Commissioner Susan Ness  
Commissioner James H. Quello

INFORMATION  
TECHNOLOGIES

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET  
OMAHA, NEBRASKA 68179



March 28, 1996

The Honorable Reed Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20054

Re: Microwave Relocation; WT Docket No. 95-157;  
March 1 Letter from Thomas E. Wheeler

Dear Chairman Hundt:

On March 1, 1996, Thomas E. Wheeler, President of the Cellular Telecommunications Industry Association (CTIA), sent you and the other four Commissioners a letter in which he accused the Union Pacific Railroad of serious misconduct in connection with negotiations involving relocation of our 1.9 GHz microwave facilities. I wish to advise you that Mr. Wheeler's allegations and charges against Union Pacific are completely false.

In his March 1 letter, Mr. Wheeler accused Union Pacific of "extortion," "bad faith," and "outlandish" and "irresponsible" behavior regarding our negotiations with one of CTIA's members, Sprint Spectrum. More specifically, Mr. Wheeler claimed that Union Pacific had requested \$46,250,000 from Sprint to relocate 24 microwave links, and that, of this total amount, only \$6 million was "fair" and the remaining \$40,250,000 was "extortion" money. This is not true.

The record shows (and Sprint's own documents confirm) that the \$46,250,000 figure was for all 185 links in our entire system at 1.9 GHz, not merely the 24 links claimed by Mr. Wheeler. Importantly, Sprint itself prepared a system-wide relocation proposal for Union Pacific which addressed all 185 links and, in a letter dated December 14, 1995, stated that Sprint "understands" Union Pacific's desire for a "systemic solution." The \$46,250,000 figure quoted in the CTIA's March 1 letter is based on 185 links at a per-link cost of \$250,000, which was recognized as a fair average per-link cost not only by the Commission but by CTIA, as well. It is simply the mathematical result of multiplying 185 links (which Sprint itself acknowledged as the appropriate number in its December 14 letter proposing a system-wide relocation solution) by the average per-link cost of \$250,000. Thus, contrary to Mr. Wheeler's false and deceitful characterization, the \$46,250,000 figure is not an "outrageous" demand; it is not "outlandish;" it is not "greedy;" and it is not, most emphatically, "extortion."

Accompanying Mr. Wheeler's March 1 letter was documentation prepared by Sprint (or Sprint's agents) in which Sprint's characterization of Union Pacific was just as false and misleading as Mr. Wheeler's. In the document dated 2/23/96, Sprint called Union Pacific a "bad actor," and gave the impression that Union Pacific had not responded to Sprint's proposal and that negotiations had broken off. Again, this is simply not true. In fact, Union Pacific has continued its discussions with Sprint, although we are not at liberty to disclose the nature of those discussions because of a confidentiality agreement which Union Pacific considers binding and which it intends to honor.



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I cannot over-emphasize the importance of a systemic approach to our microwave relocation. Union Pacific's 185 paths in the 1.9 GHz band are used for controlling train operations throughout the entire Union Pacific rail network, which covers most of the Midwest and Western portions of the U.S. The microwave system carries critical, safety-related communications that are integral to the minute-to-minute controlling and routing of trains, including dispatcher communications, train signals and track switching. Because of the safety-critical nature of the communications carried on our microwave system, our number one priority is reliability -- a communications failure in railroad operations is not merely an inconvenience; it carries significant safety risks. Replacing portions of the system on a piecemeal, haphazard, link-by-link basis would compromise overall system integrity, reliability and safety, a result that we simply cannot accept. With a microwave network as large and far-flung as ours, a patchwork of different technologies -- including dissimilar types of equipment from varying manufacturers, multiple and varied test protocols and diverse maintenance procedures -- inevitably will result in greater system complexity, decreased reliability and increased risk of system failure.

The need for maintaining the integrity of entire networks was recognized by the Commission when it proposed a cost-sharing plan whereby the licensees of various PCS spectrum blocks and geographic markets would be required to share in the expense of system-wide relocations. Indeed, the desirability of system-wide microwave relocations was acknowledged by Sprint in its comments filed in WT Docket No. 95-157, where Sprint stated that systemic relocations "can be, in the long run, more spectrum efficient, less costly and less disruptive."

Union Pacific urges the Commission to adopt a cost-sharing plan to facilitate systemic microwave relocations. Of equal importance, the Commission should adopt rules requiring existing PCS licensees -- presently the A and B licensees -- to participate jointly in relocation negotiations with incumbents and to share in system-wide relocation costs, subject to reimbursement later by PCS licensees in subsequent spectrum blocks, including the C block licensees.

In conclusion, I wish to reiterate our very strong concern about the misrepresentations contained in Mr. Wheeler's March 1 letter and the false and misleading manner in which Union Pacific was portrayed. Contrary to Mr. Wheeler's characterization, Union Pacific has negotiated in good faith from the very outset with Sprint and other PCS licensees. We recognize that the Commission has concluded that the use of the 1.9 GHz spectrum for PCS service is in the public interest, and that inauguration of PCS service requires that incumbent microwave users vacate the band. We have attempted as best we can to accommodate the FCC's goal of expediting PCS service to the public. However, we must point out that the Commission's present rules do not encourage an efficient resolution of system-wide relocation issues. For this reason, we encourage the Commission to adopt a cost-sharing plan and a procedure that will require A and B block licensees to share in the responsibility for systemic relocations.

Sincerely,



G. Lynn Andrews

Asst. Vice President Telecommunications

cc: Commissioner James Quello  
Commissioner Andrew Barrett  
Commissioner Rachelle Chong  
Commissioner Susan Ness  
Michele Farquhar

Rosalind Allen  
Thomas E. Wheeler  
Ronald T. LeMay